Office of Chief Counsel Internal Revenue Service

memorandum

CC:NER:MAN:TL-N-3914-99 PLDarcy

date:

to: District Director, Manhattan Chief, Examination Division Attn: Mr. John Petitio Mr. Harry Ziethchick

from: District Counsel, Manhattan

subject:

Tax year ended December 31, Consent to Extend the Statute of Limitations On Assessment

THIS DOCUMENT MAY INCLUDE CONFIDENTIAL INFORMATION SUBJECT TO THE ATTORNEY-CLIENT AND DELIBERATIVE PROCESS PRIVILEGES, AND MAY ALSO HAVE BEEN PREPARED IN ANTICIPATION OF LITIGATION. THIS DOCUMENT SHOULD NOT BE DISCLOSED TO ANYONE OUTSIDE THE INTERNAL REVENUE SERVICE, INCLUDING THE TAXPAYERS INVOLVED, AND ITS USE WITHIN THE INTERNAL REVENUE SERVICE SHOULD BE LIMITED TO THOSE WITH A NEED TO REVIEW THE DOCUMENT IN RELATION TO THE SUBJECT MATTER OF THE CASE DISCUSSED HEREIN. THIS DOCUMENT IS ALSO TAX INFORMATION OF THE INSTANT TAXPAYERS WHICH IS SUBJECT TO I.R.C. § 6103.

to the uniform partnership audit procedures. I.R.C. § 6221 et. seq. The advice rendered in this memorandum is conditioned on the accuracy of the facts presented to us. This advice is also subject to National Office review. We will contact you within two weeks of the date of this memorandum to discuss the National Office's comments, if any, about this advice.

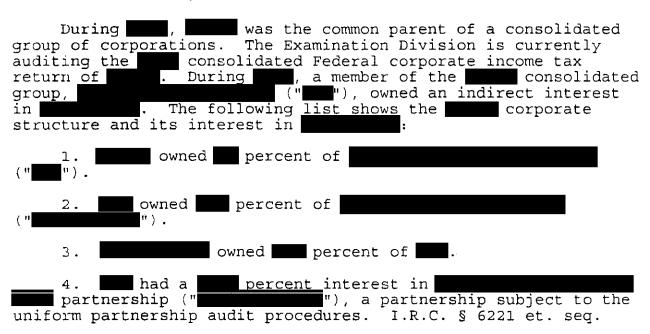
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ISSUE:

1. Whether the Internal Revenue Service and can extend the statute of limitations to assess partnership items that flow to from from the statute.

FACTS:

THE ADVICE IS RENDERED ON THE BASIS THAT ALL THE REPRESENTATIONS AND FACTS IN THIS MEMORANDUM ARE CORRECT. WE RECOMMEND THAT YOU VERIFY THIS INFORMATION. IF ANY OF THE REPRESENTATIONS AND/OR FACTS ARE INCORRECT OR CANNOT BE SUBSTANTIATED, WE MAY NEED TO MODIFY OUR ADVICE.



had a percent interest in

The Internal Revenue Service and do not want to assess the Adjustment at this time and seek to extent the statute of limitations to assess the Adjustment.

CONCLUSION:

A current officer of and a representative of the Internal Revenue Service can enter into a agreement to extend the statute of limitations on assessment of the Adjustment.

DISCUSSION:

On entered into an agreement with respect to the low income housing credits flowing from to to the low on this date, these items became non-partnership items. I.R.C. § 6231(b)(1)(C). Accordingly, the Internal Revenue Service has until to assess the Adjustment. I.R.C. § 6229(f)(1).

I.R.C. § 6229(f)(1) further provides that the one year assessment statute of limitations "may be extended with respect to any partner by agreement entered into by the Secretary and such partner." Accordingly, the consolidated group and the Internal Revenue Service can enter into an agreement to extend the one year statute of limitations for assessing the Adjustment.

In the case of a consolidated group, we can find guidance as to the appropriate entity to enter into consents related to the consolidated groups tax liability in the consolidated return regulations. Treas. Regs. § 1.1502-1 et seq. Pursuant to the consolidated return regulations, the common parent acts as the sole agent for each member of the group, duly authorized to act in its own name in all matters relating to the income tax liability for the consolidated return year. Treas. Reg. § 1.1502-77(a). Accordingly, an officer of should execute the consent to extend the statute of limitations prior to

A "partner" is defined, inter alia, as "a partner in the partnership" and "any other person whose income tax liability under subtitle A is determined in whole or part by taking into account directly or indirectly partnership items of the partnership." I.R.C. § 6231(a)(2). Accordingly, of both and and .

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We recommend that an officer of and a duly designated Internal Revenue Service employee execute a Form 872-F prior to . We further recommend that the Form 872-F contain the following language:

In addition to the recommendations made herein, we further recommend that you pay strict attention to the rules set forth in the IRM. Specifically, IRM 4541.1(2) requires use of Letter 907(DO) to solicit the Form 872, and IRM 4541.1(8) requires use of Letter 929(DO) to return the signed Form 872 to the taxpayer. Dated copies of both letters should be retained in the case file as directed. When the signed Form 872 is received from the taxpayer the responsible manager should promptly sign and date it in accordance with Treas. Reg. § 301.6501(c)-1(d) and IRM 4541.5(2). The manager must also update the statute of limitations in the continuous case management statute control file and properly annotate Form 895 or equivalent. See IRM 4531.2 and 4534. This includes Form 5348. In the event a Form 872 becomes separated from the file or lost, these other documents would become invaluable to establish the agreement.

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Should you have any questions regarding this matter, please contact Paul Darcy at (212) 264-5473 extension 256.

LINDA R. DETTERY District Counsel

By:

THEODORE R. LEIGHTON
Assistant District Counsel

Noted:

Linda R. Dettery District Counsel

cc: Paulette Segal

Assistant Regional Counsel (LC) (by e-mail)

Mary Helen Weber

Assistant Regional Counsel (LC) (by e-mail)

Michael P. Corrado

Assistant Regional Counsel (TL) (by e-mail)

Peter J. LaBelle

Assistant District Counsel (by e-mail)